



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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Frank J. Thornton
Chairman
Board of Supervisors
Henrico County
4301 East Parham Road
Henrico, Virginia 23228

Re: Administrative Order (EPA Docket No. CWA-03-2011-0133 DN)

Dear Mr. Thornton:

The United States Environmental Protection Agency ("EPA") has identified violations of requirements contained in the Clean Water Act ("Act") and the Virginia Pollutant Discharge Elimination System ("VPDES") permit, VA0088617, applicable to the Henrico County for its municipal separate storm sewer system (MS4) located in Henrico County, Virginia. Enclosed is a copy of an Administrative Order (Order) issued this date pursuant to Section 309(a) of the Act, as amended, 33 U.S.C. § 1319(a). This Order contains findings that you have violated Section 301 of the Act, 33 U.S.C § 1311.

You should carefully read the contents of the enclosed ORDER, and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the ORDER may result in further enforcement actions being taken, including a civil suit for penalties and injunctive relief, or a criminal prosecution as appropriate.

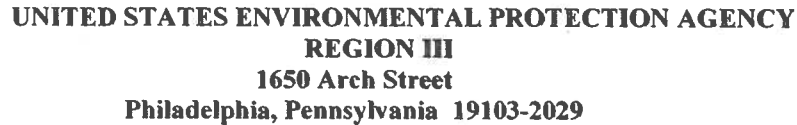
If you require any information or assistance regarding this matter, please contact Christopher Menen, U.S. EPA Region III, NPDES Enforcement Branch, 215-814-2368 or Pamela Lazos, Senior Assistant Regional Counsel, 215-814-2658.

Sincerely,

Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection Agency, Region III

Enclosure

cc: Anne Crosier, VA DCR



Docket No. CWA-03-2011-0133DN
FINDINGS OF VIOLATION
ORDER FOR COMPLIANCE

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutants (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
3. EPA is authorized under Section 308 of the Act, 33 U.S.C. § 1318, to require owners and operators of point sources to establish records and make such reports as may be necessary to carry out the purpose of the Act, including but not limited to:
 - (a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance under the Clean Water Act;
 - (b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;
 - (c) Any requirement under Section 308 of the Clean Water Act; and

(d) Carrying out Sections 305, 311, 402, 404, and 504 of the Clean Water Act.

4. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
5. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
6. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
7. The term "municipal separate storm sewer system" (MS4) includes, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8)(i).
8. A NPDES permit is required for discharges from a Phase I MS4 serving a population of 250,000 or more, Section 402(p)(2)(C) of the Act, 33 U.S.C. § 1342(p)(2)(C); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.
9. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Virginia Department of Environmental Quality ("VADEQ") to issue NPDES permits on May 20, 1991. On December 30, 2004, EPA approved the Commonwealth of Virginia's request to transfer the permitting program for construction and MS4 stormwater discharges from VADEQ to the Virginia Department of Conservation and Recreation.

III. EPA FINDINGS AND ALLEGATIONS

10. Henrico County, Virginia (Respondent) is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
11. Respondent, at all times relevant to this Order, has owned and/or operated an MS4, located within the geographic boundaries of Henrico County, Virginia ("VA").
12. The County of Henrico is located in Central Virginia and encompasses a total area of 244 square miles. Henrico County is bordered by the James River, the Tuckahoe Creek, and the Chickahominy River. Stormwater from the County drains to "water of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.

13. The Virginia Department of Environmental Quality (VADEQ) issued to Respondent an NPDES MS4 Discharge Permit No. VA0088617 on March 18, 2003, which permit was modified on March 5, 2004 (hereinafter the "MS4 Permit"). The MS4 Permit expired on March 17, 2008, and has been administratively extended to the present.
14. On April 19 and 20, 2010, a compliance inspection team comprised of EPA staff and authorized representatives of EPA inspected Respondent's MS4 program.

IV. FINDINGS OF VIOLATION

A. Illicit Discharge Detection and Elimination

15. Pursuant to Part I.A.1.b. of the Permit, the Respondent's Storm Water Management Program shall contain a "program and schedule to detect and remove, or to notify a discharger to apply for a separate VPDES permit for, unauthorized non-storm water discharges and/or improper disposal into the municipal separate storm sewer system.
16. Pursuant to Part I.A.1.b.(2) of the Permit, "[t]he permittee shall continue the implementation of the current field screening procedures for identifying unauthorized non-storm water discharges and improper disposal into the storm sewer system. Priority shall be placed on segments of the storm sewer system which receive drainage from industrial and commercial sources."
17. Pursuant to Part I.B.5. of the Permit, "[t]o the extent practicable, subject to annual appropriations, the permittee shall provide adequate finances, staff, equipment, and support capabilities to implement all parts of the Storm Water Management Program required by Part I.A. of this permit."
18. At the time of the inspection, Henrico County's inspector stated that in 2007, Henrico County inspected approximately 1200 inlets and outfalls. In 2008, the number of inspections dropped to 400 and in 2009, the County inspected 150 inlets and outfalls. There are over 1000 outfalls in Henrico County. Currently, Henrico County has discontinued the inlet inspections and only inspects a limited number of outfalls.
19. Respondent failed to comply with Parts I.A.1.b.(2) and I.B.5. of the Permit by discontinuing implementation of the field screening procedures in place at the time the Permit was issued, and by failing to commit adequate resources to the inspections. Respondent's actions resulted in an inability to inspect a sufficient number of inlets and outfalls in the County in violation of its Permit.
20. Pursuant to Part I.A.3. of the Permit (Annual Report), and as part of the Respondent's annual reporting requirements, Respondent shall submit "a summary of maintenance activities performed on structural BMPs in accordance with Part I.A.1.a.(1) (which requires the permittee to continue with the existing maintenance program for its structural controls) , is required to be submitted to VADEQ in Respondent's annual report. See Part I.A.3.a.(1).

21. On an annual basis, Henrico County's Dry Weather Screening Inspector generates a list of all outfalls that require cleaning. The data base is marked "TRUE," and an email is sent to the Road Maintenance Division to enter a cleaning request into their work order system. Once the Road Maintenance Division completes the work, the data base entry is changed from "Needs Cleaning" to "False." At the time of inspection, Complainant discovered that Respondent failed to document follow-up actions taken after potential illicit discharges were found. Specifically, there was no tracking information regarding routine maintenance and no procedure to describe work performed at a particular outfall other than to change the heading from "needs cleaning" to "false".
22. Respondent failed to comply with Parts I.A.3. (annual reporting), and I.B.5 (implementation of the Storm Water Management Program), of the Permit, by failing to provide a summary of maintenance activities on its structural BMPs and failing to provide adequate support capabilities to implement all parts of the Storm Water Management Program, which includes tracking of outfall inspections, in violation of the Permit.
23. Pursuant to Part I.A.1.b.(3), "[w]here necessary, the permittee shall conduct on-site investigation of potential sources of unauthorized non-storm water discharges. The permittee shall act as expeditiously as possible to require a discharger to eliminate unauthorized non-storm water discharges except discharges identified in Part 1.B.4." of the Permit. If a VPDES permit is needed, but not obtained by the discharger, the permittee shall take actions to implement the applicable provisions of the County Code. The permittee shall require immediate cessation of improper disposal practices upon identification of responsible parties.
24. Upon review of the Respondent's outfall inspection database, the EPA inspection team noted several instances that a potential illicit discharge was identified during an inspection and no information was logged into the inspection database. In addition, a comparison of the inspection database entries with corresponding paper records found inconsistencies and missing information.
25. Respondent failed to comply with Parts I.A.1.b.(3), I.A.1.b(2) and I.B.5. of the Permit by failing to properly document potential illicit discharge investigations; failing to implement current field screening procedures; and failing to provide adequate support capabilities to implement all parts of the Storm Water Management Program in violation of the Permit.
26. A review of the Respondent's inspection database identified several entries indicating that Henrico County inspectors could not confirm the location of outfalls that the County cannot visually locate. In addition, the Respondent has no protocol for confirming outfalls that cannot be visually found.
27. Respondent failed to comply with Parts I.A.1.b.(2) and I.B.5., of the Permit by failing to implement current field screening procedures, and failing to provide adequate support capabilities to implement all parts of the Storm Water Management Program in violation of the Permit.

Industrial and Commercial Facilities

28. Pursuant to Part I.B.4. of the Permit, “[t]he permittee shall operate pursuant to the established legal authority described in 40 C.F.R. § 122.26(d)(2)(i), or shall obtain legal authority necessary to control discharges to and from those portions of the municipal separate storm sewer system over which it has jurisdiction.” In addition, pursuant to A.1.b.(1), “[t]he permittee shall implement and enforce all provisions of the County’s Storm Sewer System Discharge Ordinance which prohibits unauthorized non-storm water discharges to the storm sewer system.”
29. Section III of the Respondent’s Storm Water Management Master Plan states “[t]he legal authority to conduct inspections and require compliance is based on the fact they drain to the County’s storm sewer system for which the County holds a NPDES permit or the industry has a SIC code that is required to have a NPDES industrial permit with a Pollution Prevention Plan.”
30. Chapter 10 – Environment, Article VII., Section 10-198 (a) of the Henrico County Code states: “[t]he director shall have authority to carry out all inspections, surveillance and monitoring procedures necessary to determine compliance and non-compliance with the condition of the county’s VPDES permit, including the prohibition of illicit discharges to the storm sewer system. The director may monitor storm water outfalls or other components of the storm sewer system as may be appropriate in the administration and enforcement of this article.”
31. Pursuant to Part I.A.1.d.(1), “[t]he permittee shall continue to operate in accordance with, and continue enforcement of, the stormwater management requirements of the Chapter 10, Environment, and Chapter 24, Zoning, of the Code of the County of Henrico Virginia, for land disturbing activities.”
32. Henrico County staff stated that the County has not established the necessary legal authority to conduct routine inspections of private industrial and commercial facilities for stormwater discharges unless a release is suspected based upon outfall screening information, or if a potential release is identified by another Henrico County agency. Respondent relies on industrial and commercial facilities submitting to voluntary inspections and notifies the facility thirty days in advance of the inspection. However, under Chapter 10 – Environment, Article VII, Section 10-198, Respondent has designated inspection authority to the County inspectors.
33. Pursuant to Art. VII. Sec. 10-198 (b), of the Henrico County Code, “[t]he director shall have the authority to require pollution prevention plans from any person whose discharges cause or may cause a violation of the county’s VPDES permit.”
34. Respondent failed to comply with Part I.B.4. of the Permit by failing to have a program to monitor and inspect industrial facilities and thereby control discharges to and from those portions of the municipal separate storm sewer system over which it has jurisdiction.

35. Pursuant to Part I.A.1.c.(2) of the Permit, “[t]he permittee may monitor, or require the facility to monitor, storm water discharges associated with industrial activity to the municipal separate storm sewer system from facilities described in Part I.A.1(c).”
36. Henrico County is not completing all industrial and commercial facility inspections that the County has identified as necessary due to a lack of MS4 inspection staff. EPA’s review of the County’s inspection records determined that the Respondent is not conducting the necessary inspections at industrial and commercial facilities identified as potential sources of contaminated storm water runoff.
37. Respondent failed to comply with Part I.A.1.c., by failing to provide: “[a] program to monitor and control pollutants in storm water discharges from municipal landfills, hazardous waste treatment, storage and disposal facilities, industrial facilities subject to Section 313 of the Emergency Planning and Community Right to Know Act, and facilities determined by the permittee to be contributing substantial pollutant loadings,” and Part I.B.5. of the Permit by failing to “provide adequate finances, staff, equipment and support capabilities to implement all parts of the Storm Water Management Program required by Part I.A.” in violation of the Permit.
38. On April 19 and April 20, 2010, EPA accompanied the Henrico County Industrial Inspector on three industrial facility inspections. Numerous potential violations noted by the EPA inspection team were not cited by the County Inspector. In addition, the EPA Inspection Team witnessed the County Inspector failing to note evidence of potential violations and fully investigate other potential noncompliance identified during the three facility inspections. Respondent is not conducting thorough inspections of industrial facilities and therefore, is not identifying all of the facilities contributing substantial pollutant loadings.
39. Respondent failed to comply with Part I.A.1.c. of the Permit by failing to monitor and control pollutants in storm water discharges from industrial facilities determined by Henrico County to be contributing substantial pollutant loadings.
40. Pursuant to Part I.B.2. the Permit, “[t]he permittee shall ensure that all pollutants discharged from the municipal separate storm sewer system shall be reduced to the maximum extent practicable through the continued development and implementation of a comprehensive Storm Water Management Program as specified in Part I.A. of this permit,” and further, pursuant to Part I.B.3., the permittee shall effectively prohibit non-storm water discharges into the municipal separate sewer system... or shall allow such discharges...” where...”authorized by a separate VPDES permit.”
41. The EPA inspection team and the Henrico County Industrial Inspector conducted site visits of the Respondent’s Central Automotive Maintenance (CAM) garage and the County salt storage facility. At the CAM facility, the EPA inspection team noted evidence of numerous oil spills in close proximity to storm drains, open dumpsters, outdoor above-ground petroleum storage tanks without secondary containment. At the salt storage facility, the EPA inspection team noted dark stains around the retention pond indicating a possible release, compromised silt fencing near a wetland, and uncovered stockpiles.

42. Respondent failed to comply with Parts I.B.2. and 3. of the Permit by failing to require secondary containment around above-ground petroleum storage tanks, among other things, and to ensure that all pollutants discharged from the municipal separate storm sewer system were reduced to the maximum extent practicable through the continued development and implementation of a comprehensive Storm Water Management Program as specified in Part I.A. of the Permit.

Construction Sites – BMPs

43. Pursuant to Part I.A.1.d., Respondent's Permit, shall contain "a program to continue implementation and maintenance of structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites."
44. On April 20, 2010, the EPA Inspection Team witnessed an inspection of a Henrico County Public School by a Henrico County Environmental Inspector. The site map did not designate a location for a concrete washout area, a requirement of the Virginia Storm Water Management Program General Permit. Due to the absence of a designated concrete washout area at the Site, concrete wash water was observed being actively released into the ground surface. The County Environmental Inspector did not identify deficiencies pertaining to the non-sediment pollutants while on site and did not document the aforementioned deficiencies in County's Erosion and Sediment Control Inspection Report.
45. Respondent failed to comply with Part I.A.1.d. of the Permit by failing to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites.
46. The Virginia Erosion and Sedimentation Control Regulations at 4VAC50-30-06B, Maintenance and Inspections, requires Respondent to "provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two week period, within 48 hours following any runoff producing storm event and at the completion of the project prior to release of any performance bonds."
47. The EPA Inspection Team review found that the Respondent does not maintain records to document the type of erosion and sediment control inspection performed, does not provide a structured format to facilitate documenting the inspection type and does not maintain records to document that inspections are carried out in accordance with Section 10-41 of the Henrico County Erosion and Sediment Control Ordinance and the Virginia Erosion and Sediment Control Regulations.
48. Respondent failed to comply with Part I.A.1.d(1) of the Permit by failing to operate in accordance with the stormwater management requirements of Chapter 10, Environment, of the Code of the County of Henrico Virginia and the Virginia Erosion and Sediment Control Regulations.

Continuing Education

49. Pursuant to Part I.A.1.d.(2), Respondent "shall continue implementation of the education and training program for construction site operators."

50. Respondent has not conducted a formal education and training class for construction site operators since conducting a site contractor workshop on November 7, 2002 prior to the current term of the Permit.
51. Respondent failed to comply with Part I.A.1.d.(2) of the Permit by failing to conduct a formal education and training program for construction site operators.

V. CONCLUSIONS OF LAW

52. Respondent's failure to comply with its MS4 Permit constitutes violations of the Permit and Section 301 of the CWA, 33 U.S.C. § 1311.

VI. ORDER FOR COMPLIANCE

AND NOW, this 6th day of April, 2011, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a) and Section 308 of the Act, 33 U.S.C. § 1318, to do the following:

53. Within sixty (60) days of the effective date of this Order, Respondent shall:
- (a) Cease and desist all discharges without a permit to waters of the United States at the Site.
 - (b) Come into compliance with all requirements of its MS4 Permit and Storm Water Management Master Plan.
 - (c) Within forty-five (45) days of the effective date of this Order, Respondent shall submit to EPA a detailed Corrective Action Implementation Plan ("Plan") to modify its storm water management programs to require actions to rectify the violations identified in the Order. Respondent shall include a copy of all Notice of Intent (NOIs) submitted for each municipal facility that requires NPDES permit coverage.
 - (d) Modify in writing its Storm Water Management Master Plan and any other applicable storm water policy or guidance the violations identified in this Order.
 - (e) Provide certification, signed by a responsible corporate officer, as defined in 40 CFR § 122.22, that reads as follows: *"I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*
54. Respondent's failure to complete all work in a manner consistent with this Order shall be deemed a violation of this Order.

55. The Corrective Action Implementation Plan and all other correspondence should be submitted to:

Christopher Menen, Enforcement Officer
U.S. EPA, Region III, (3WP42)
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2368

VII. GENERAL PROVISIONS

56. Issuance of this Order shall not be deemed an election by EPA to forgo any administrative, civil, or criminal action to seek penalties, fines, or any appropriate relief under the Act for violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, 18 U.S.C. § 1001, and/or a civil judicial action initiated by the EPA and the U.S. Department of Justice. If EPA initiates such an action, Respondent may be subject to civil penalties of up to \$37,500 per day of violation pursuant to 33 U.S.C. § 1319 and 40 C.F.R. Part 19.
57. If a criminal judicial action is initiated, and Respondent is convicted of a criminal offense under Section 309 of the Act, Respondent may be subject to a monetary fine and/or imprisonment, and may become ineligible for certain contracts, grants, or loans under Section 508 of the Act.
58. Respondent shall permit EPA or its authorized representative to inspect any site under its control or authority at reasonable times to confirm that Respondent is in compliance with this Order and with any applicable permit. EPA reserves all existing inspection authority.
59. This Order does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order and Request does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law, regulation or ordinance.

VIII. EFFECTIVE DATE

This ORDER is effective upon receipt.

Date: 4/6/14

Catherine A. Ptas
Jon M. Capacasa, Director
Water Protection Division
EPA, Region III

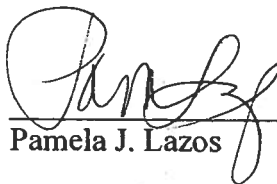
CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I filed the original attached Administrative Order with the Regional Hearing Clerk, and sent a copy thereof to the following person via certified mail, return receipt requested:

Frank J. Thornton
Chairman
Board of Supervisors
Henrico County
4301 East Parham Road
Henrico, Virginia 23228

Date: _____

4/6/11



Pamela J. Lazos